

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-454 (RGA)
	)	
ELECTRONIC ARTS INC.,	)	<b>PUBLIC VERSION</b>
	)	
Defendant.	)	
	)	

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**ACCELERATION BAY LLC’S ANSWERING BRIEF IN OPPOSITION  
TO ELECTRONIC ARTS INC.’S MOTION FOR SUMMARY JUDGMENT OF  
NON-INFRINGEMENT BY COLLATERAL ESTOPPEL**

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## I. NATURE AND STAGE OF PROCEEDINGS

The Court should deny Electronic Arts Inc.'s ("EA") motion for summary judgment on collateral estoppel (D.I. 581, "Motion") because it fails to carry its heavy "burden of showing that the accused devices are essentially the same as those in the prior litigation." *ArcelorMittal Atlantique et Lorraine v. AK Steel Corp.*, 908 F.3d 1267, 1274 (Fed. Cir. 2018) (citations omitted). The Court's grant of summary judgment of non-infringement in *Take-Two* was based on the specific games and networks at issue in that case. EA's infringing games, which have no relationship to the games of its competitor Take-Two, use network structures that are very different from those at issue in *Take-Two*, precluding any application of collateral estoppel. *Id.* This is particularly the case on summary judgment, where Acceleration Bay is entitled to all reasonable inferences from the record. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

The Court should also decline EA's invitation to reconsider summary judgment on grounds other than collateral estoppel. In its first two summary judgment motions, which spanned six briefs and over 150 pages of briefing, EA raised the same non-infringement theories it raises in this Motion. *See, e.g.*, D.I. 424 (EA's Proposed Order) at ¶ 1 (seeking summary judgment that "Electronic Arts does not infringe any asserted claim . . . because the accused networks are not configured to be m-regular and non-complete as required by these patents."); Declaration of Aaron Frankel ("Frankel Decl."), Ex. B (11/4/21 Hearing Tr.) at 30:23-31:3 ("I think the Defendants . . . they're partly responsible for where we are because they're the ones who raised, I forget how many issues, but way too many issues to actually brief them meaningfully in the pages that were at offer there. And so, to some extent, this looks like taking a second shot."). EA's arguments should be denied for the same reason the Court denied them

the first time around; there are multiple material factual disputes that create triable issues on infringement that cannot be resolved on summary judgment. D.I. 545 at 15-16.<sup>1</sup>

## II. STATEMENT OF FACTS

### A. Acceleration Bay's M-Regular Patents Use an Application Layer Overlay Network

A pair of Boeing engineers, Dr. Fred Holt and Virgil Bourassa, conceived of a series of inventions for providing efficient and reliable broadcast of data through large networks that resulted in Acceleration Bay's U.S. Patent Nos. 6,701,344, 6,714,966, 6,732,147, and 6,910,069 (the "Asserted Patents"). D.I. 89, Ex. A-1 ("344 Patent") at 2:38-42, 4:23-26 (broadcast overlay uses the underlying network to form point-to-point connections), 4:35-47 (m-regular overlay network does not fail unless  $m$  number of computers disconnect), Fig. 2. These patents use networks where a large number of participating "nodes" are connected to create a virtual network, referred to as an "overlay" network that relies on an underlying network implemented using the Internet or other networks. *See, e.g.*, "344 Patent at 4:3-47 ("The logical broadcast channel is implemented using an underlying network system (e.g., the Internet) that allows each computer connected to the underlying network system to send messages to each other connected computer using each computer's address."); D.I. 249 at 3 ("The Broadcast Claims overlay the underlying network system with a certain graph of point-to-point connections between host computers (or 'nodes') through which a broadcast channel is implemented"). While the Asserted Patents define the special properties and architecture of the overlay network, the underlying network can have any structure, so long as it is capable of moving messages between the participants in the overlay network.

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<sup>1</sup> For purposes of reducing the issues in dispute, Acceleration Bay is narrowing its election of asserted claims to no longer include any claims from U.S. Patent No. 6,920,497.

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